Supreme Court, U. S.
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No. 73-1788

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

LOCAL UNIONS NOS. 2188 and 1974, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,

Petitioners,

—v.—

NATIONAL LABOR RELATIONS BOARD and WESTERN ELECTRIC COMPANY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR WESTERN ELECTRIC COMPANY IN OPPOSITION

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1. The Board found, in each of these consolidated cases, that the dispute between the Company and Unions was essentially contractual in nature and that the parties had voluntarily agreed to resolve the issue by means of the grievance-arbitration provisions of their collective bargaining agreement. Accordingly, the Board (with one Member dissenting), applied its decision in *Collyer Insulated Wire,* 192 NLRB 837. It withheld its own processes, remitted the parties to the grievance-arbitration procedures of their contract and retained jurisdiction so that it could, upon "appropriate and timely motion" by one of the parties, determine whether the dispute had been resolved by amicable settlement in the grievance procedure or submitted to

arbitration, and if so, whether those procedures had been fair and regular and had reached a result not repugnant to the Act (Pet. App. 10a-11a, 41a-42a, 47a-48a).

2. The Court of Appeals held that "the *Collyer* rule of deferral to grievance and arbitration procedures is clearly valid" (Pet. App. 5a).[1] The Court concluded that application of the *Collyer* rule was proper in the circumstances of these cases since, *inter alia*, "the results of an arbitration will very likely be dispositive of the unfair labor practice issue" (Pet. App. 8a).

3. We submit that the Court of Appeals correctly held that the *Collyer* policy "is clearly valid" (Pet. App. 5a) and that it was properly applied here (Pet. App. 8a-9a). In opposing the petition, we are in full agreement with the reasons set forth in the opposition brief of the National Labor Relations Board in this case, and in its opposition to certiorari in *Provision House Workers Union Local 274, AFL-CIO* v. *National Labor Relations Board*, No. 73-1593, this Term.

4. There can be no doubt at this point in the history of the Act that the Board is not required to exercise the full extent of its statutory authority, but may decline to assert

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[1] Every Court of Appeals that has considered the "*Collyer* rule of deferral" has approved it. See, in addition to the decision below, *Associated Press* v. *National Labor Relations Board*, 492 F.2d 662, 666 (D.C. Cir.); *Nabisco, Inc.* v. *National Labor Relations Board*, 479 F.2d 770 (2nd Cir.); *Enterprise Publishing Co.* v. *National Labor Relations Board*, 493 F.2d 1024 (1st Cir.); *Provision House Workers Union Local 274, AFL-CIO* v. *National Labor Relations Board*, 85 LRRM 2863 (9th Cir.). See also *Local 715* v. *National Labor Relations Board (Malrite of Wisconsin, Inc.)*, 494 F.2d 1136 (D.C. Cir.). And see *William E. Arnold Co.* v. *Carpenters District Council No. 73-466*, 86 LRRM 2212, 2214, May 20, 1974, (U.S. Sup. Ct.).

jurisdiction over alleged unfair labor practices if declination would effectuate the purposes of the Act. See, *e.g.*, *National Labor Relations Board* v. *Indiana & Michigan Elec. Co.*, 318 U.S. 9, 18-19; *National Labor Relations Board* v. *Denver Bldg. & Const. Trades Council*, 341 U.S. 675, 684; *National Labor Relations Board* v. *Plasterers Local Union No. 79*, 404 U.S. 116, 136-137; Section 10(a) of the Act (29 U.S.C. §160(a)). *A fortiori*, the Board may decide, as it did here, merely to *defer* the exercise of jurisdiction until after the parties have utilized their contractual grievance-arbitration provisions.

The Board has frequently shown deference to the arbitration forum when it believed such deference would "serve the fundamental aims of the Act." *International Harvester Co.*, 138 NLRB 923, 925-926. In *Carey* v. *Westinghouse*, 375 U.S. 261, 271, this Court approved the Board's policy of deferral to an existing arbitration award. See also, *National Labor Relations Board* v. *Plasterer's Local Union No. 79, supra.* Contrary to petitioners' suggestion (Pet. 8), there is no distinction between post-award and pre-award deferral cases, either in terms of the Board's authority under the Act, or its underlying policy.[2] Both derive from the same premise, that deferral "[encourages] practices fundamental to the friendly adjustment of industrial disputes . . ." and "the practice and procedure of collective bargaining . . ." Section 1 of the Act (29 U.S.C. 151). As stated in *Arnold Co.* v. *Carpenters District Council, supra,*

[2] No Court has drawn the distinction suggested by Petitioners (Pet. 9). Indeed, the Courts have, at times, grouped the Board's pre-award and post-award decisions together when discussing the Board's deferral policy. See, *Smith* v. *Evening News Ass'n*, 371 U.S. 195, 198 (n. 6); *Carey* v. *General Electric Co.*, 315 F.2d 499, 510 (2d Cir.), *cert. denied*, 377 U.S. 908.

n.1, "The Board's position [in *Collyer*] harmonizes with Congress' articulated concern that, '[f]inal adjustment by a method agreed upon by the parties is . . . the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. . . .' Section 203(d) of the LMRA, 29 U.S.C. § 173(d)."

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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